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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 28 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director denied the petition on multiple grounds in a decision dated July 30, 2002.

On appeal, the petitioner submits the beneficiary's full, Monday through Friday, weekly work schedule. The petitioner states that it previously failed to supply the information requested because the beneficiary's ministering responsibilities vary with occasions such as baptisms, christening, weddings, and funerals.

The record will be reviewed *de novo*.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is an independent church established in 1995 having 57 members, including 20 children, in its congregation. The beneficiary is a native and citizen of Haiti who was last admitted to the United States on May 5, 2000 as a nonimmigrant visitor (B-2) with permission to remain until November 4, 2000.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding. The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
>
> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or
>
> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In addressing this requirement, the petitioner submitted a letter from the Internal Revenue Service (IRS) dated December 15, 1994, reflecting that the church was granted tax exempt recognition under section 501(c)(3) of the Internal Revenue Code (IRC).

A petitioner also must establish that the beneficiary is qualified as a minister as defined in these proceedings. The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> (B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the

> clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The record includes an identification card indicating that the beneficiary is a missionary pastor with the [redacted] The record also includes the beneficiary's "certificate of ordination" issued on March 18, 1981 "upon the recommendation and request" of the [redacted] It is concluded that the evidence submitted is insufficient to establish that the beneficiary is a qualified minister for the purpose of special immigrant classification.

In order to establish that an alien is qualified as a minister of religion for the purpose of special immigrant classification, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). A lay preacher is not eligible. See 8 C.F.R. § 204.5(m)(2). Here, there is no evidence that the beneficiary has any theological education or that the church requires a theological education in ordaining its ministers. For this reason, the petition may not be approved.

A petitioner also must establish that the beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on March 8, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the vocation of a minister of religion since at least March 8, 1999.

In support of the petition, the petitioner submitted a letter stating:

> This is to confirm that [the beneficiary] has had had five years of continuous volunteer experience in religious instruction. He has actively participated from January 3, 1997 to the present. [The beneficiary] aids in such tasks as:
>
> - Preaching
> - Playing the organ and the guitar
> - Composing songs for the adults and children's choir
> - Musical instruction to all the youth
> - Choir director for the adults
>
> [The beneficiary] volunteers on Friday from 8pm to 9pm. Saturday from 9am to 1pm & 3pm to 6pm. Sunday from 10am to 4pm.

On appeal, the petitioner asserts that it previously failed to provide the beneficiary's weekly (Monday through Friday) work schedule because his responsibilities vary. In support of the appeal, the petitioner provides a listing of the beneficiary's Monday through Friday schedule as follows:

Monday	6:00 pm - 10:00 pm	Evangelism
Tuesday	6:00 pm - 9:00 pm	Praises and Worship
Wednesday	6:00 pm - 9:00 pm	Bible Study
Thursday	6:00 pm - 7:00 pm	Counseling
	7:00 pm - 9:00 pm	Home Visits
Friday	10:00 am - 2:00 pm	Office Work
	5:00 pm - 8:00 pm	Composing Songs
	8:00 pm - 9:00 pm	Adult Choir Practice

The record reflects that in tax year 1998, the beneficiary earned $10,042.76 as an employee of Ocean House Center. In tax year 2000, he earned $10,153.28 as an employee of Garage Maintenance & Security Corp.

The petitioner has asserted that the beneficiary has provided services on a voluntary basis. There is no evidence in the record that the beneficiary has ever been paid or supported by the petitioner or any other religious organization in either a religious vocation or occupation.

As previously noted, the statute and the regulations require that the beneficiary have been continuously engaged in the religious occupation for the qualifying two-year period. The term "continuously" is not new to the context of religious workers. In 1980 the Board of Immigration Appeals determined that a minister of religion was not "continuously" carrying on the vocation of a minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). This conclusion is on point with the situation found in the current proceeding. For this reason as well, the petition may not be approved.

A petitioner also must demonstrate that a qualifying job offer has been tendered. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer*. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not submitted a specific job offer to the beneficiary, has not identified the terms of remuneration, and has not shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. For this reason as well, the petition may not be approved.

A petitioner also must demonstrate its ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In this case, the petitioner has failed to submit its annual reports, federal tax returns, or audited financial statements. For this reason as well, the petition may not be approved.

The petitioner bears the burden to establish eligibility for the benefit sought. In reviewing an immigrant visa petition, the Service must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. *See Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.